IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.204 OF 2005

Mr. Onali Bandukwala ...Petitioner.

V/s

M/s. Prithvi Capital
Markets Ltd. & Anr. ...Respondents.

Mr. M. K. Kocharekar i/b M.K. Banatwala for the petitioner.

Mr. S.V. Marwadi for respondent No.1.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 26th April, 2005

P.C.:

1. Petitioner is challenging the order of issuance of process by the Metropolitan Magistrate, 12th Court at Bandra, Mumbai on a complaint filed by respondent No.1 under section 138 and 141 of the Negotiable Instruments Act.

2. It is submitted by the learned counsel appearing on behalf of the petitioner that the petitioner had taken a loan of Rs 10 lakhs from respondent No.1 and by 1998, the entire payment of loan was made and confirmation letter was received for income tax purposes and the Bank Account was closed on 10th July, 1998. After the account was closed, the cheque book was also returned to the Bank. It is submitted that

the respondent No.1 filled up the blank cheque which was given for security purpose in 1996 and the said cheque was deposited on 21/1/2003 and the cheque was returned with the endorsement that the account was closed on 10/07/1998. Thereafter, the present complaint was filed by respondent No.1. It is submitted by the learned counsel appearing for the petitioner that the full payment of the loan by cheque and cash was made and, accordingly, the Bank Account was closed on 10/7/1998. It is submitted that the cheque dated 18/1/2003 was never issued and the said cheque was given as a blank cheque towards the security which was misused by respondent No.1.

3. The learned counsel appearing on behalf of respondent No.1 has relied upon an affidavit in reply filed by respondent No.1 and has submitted that the petitioner had issued the cheque amount which was due and payable though he knew that the account was closed. It is further submitted that the petitioner had confirmed and accepted the liability every year upto 31st December, 2001. In the said confirmation letter, the interest amount was not mentioned because though it was agreed the petitioner had not paid the interest amount till the said date. He submitted that, therefore, whether there was an existing debt or

liability is a question of fact and this question should not be decided by this Court while exercising its inherent powers under section 482 of the Criminal Procedure Code.

4. The submissions made by the learned counsel appearing on behalf of respondent No.1 will have to be accepted. The assertion made by the petitioner that there was no existing debt or liability towards respondent No.1 and that the Bank Account was, therefore, closed on 10/7/1998 has been seriously disputed by the complainant. He has stated that the confirmation letter was issued by the petitioner upto 31st December, 2001 and that the interest amount was not mentioned in the said letter since the petitioner was aware that the interest had not been paid by him. Thus, in my view, these are factual aspects which cannot be decided by this Court while exercising its inherent powers under section 482 of the Criminal Procedure Code. All questions raised by the petitioner in this application are, therefore, kept open and they shall be decided by the trial court on merits and in accordance with law after the evidence is adduced by both the parties. Criminal Application is, therefore, dismissed. Criminal Case is expedited.

V.M. KANADE, J.